



## **City of Memphis**

### **Pre-Employment Selection Procedures For Fire Recruit and Firefighter/Paramedic**

#### **Request for Proposal #2987**

Prepared By: Human Resources/Testing & Recruitment  
Closing Date for Proposals: **December 10, 2010**  
Proposals Accepted at Attn: Purchasing Agent  
Pre-Employment Selection Procedures for  
Fire Recruit and Firefighter/Paramedic  
125 N. Main Street, Room 354  
Memphis, TN 38103

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# **CITY OF MEMPHIS DIVISION OF HUMAN RESOURCES**

## **Request for Proposal**

### **Pre-Employment Selection Procedures for Fire Recruit and Firefighter/Paramedic**

#### **1. INTRODUCTION**

##### **1.1 Purpose**

The City of Memphis, Tennessee, Division of Human Resources (hereinafter referred to as "City"), is requesting proposals from management consultants (licensed Industrial/Organizational Psychologists) ("Consultant(s)"), to (i) review the existing pre-employment selection procedures, including written and/or physical ability tests, utilized by the City for the entry-level positions of Fire Recruit and Firefighter/Paramedic-Probationary within the Fire Services Division; (ii) conduct job analysis studies for each position; (iii) recommend and develop new customized selection examinations and procedures (e.g., written, physical ability) for the positions, including the development of written guidelines for each phase of the process; (iv) validate the selection procedures to be implemented; (v) prepare written validation reports, establish procedures to maintain the validity of said selection procedures, and provide written justification for the procedures to be implemented.

All work conducted for this project will be in accordance with the professional standards outlined in the Federal Uniform Guidelines on Employee Selection Procedures. The selection process must be fair, non-discriminatory and legally defensible. The selection process should also be practical and cost effective to administer periodically to a large number of candidates.

(Note: All firefighting duties apply to both job classifications in that Firefighter/Paramedic-Probationaries are cross trained and perform the duties of Fire Recruits in addition to Paramedic duties.)

The proposal shall clearly identify how the Consultant plans to satisfy the requirements of the Request for Proposal (RFP). The RFP states the scope of the requirements and specifies the general rules and format for preparing the proposal. The terms "Consultant," "Bidder," and "Contractor" are used interchangeably to refer to the proposing party.

##### **1.2 Scope of Work**

The selected Consultant shall perform the services described herein, and/or as subsequently contracted for, for the entry-level positions of Fire Recruit and Firefighter/Paramedic-Probationary (the "Positions") within the City Fire Services Division. The anticipated number of candidates ranges from 1,000 – 2,000.

a. The following services are to be provided by the selected Consultant:

- (i) Review the existing selection procedures utilized by the City Human Resources Division and the City Fire Services Division for the Positions. Review the current job descriptions for the Positions and collaborate with City Human Resources to make revisions as necessary.
- (ii) Provide a written outline for each phase of the development process with corresponding timeframes for completion for the Positions. Submit a written monthly progress report that details all phases of the project, steps of progression, relative issues and anticipated date of completion.
- (iii) Conduct job analysis studies for each Position, analyze the collected data and produce job analysis summary reports.
- (iv) Produce test specification reports and development plans for the Positions analyzed.
- (v) Design, develop and prepare written and/or physical ability tests to be utilized in the selection process for the Positions. The selected Consultant will not be permitted to use subject matter experts (SMEs) for test development for the Positions. In addition, the City will take into consideration the composition of the Consultant's staff in determining a conflict of interest.
- (vi) Address the use of the IAFF/ICHIEFS Candidate Physical Ability Test (CPAT). If the CPAT is selected, the Consultant would conduct a transportability study to determine validity for this jurisdiction. The Consultant would also research and determine the cost and feasibility of administering CPAT.
- (vii) The Consultant will consider what additional assessment tools / tests are needed to evaluate the Paramedic skills of the Firefighter/Paramedic-Probationary classification.
- (viii) The Consultant will consider what, if any, additional assessment tools / tests are needed to measure pre-employment screening and background checks.
- (ix) The selected Consultant shall timely communicate with the Manager of the Testing and Recruitment Service Center of the City Human Resources Division and the City's designated Project Lead on his/her progress throughout the planning, development and administration phases of the project. The Testing and Recruitment staff members will serve as a liaison between the Consultant and the Fire Services Division.
- (x) Provide hiring list(s)/register(s) for the Positions.

- (xi) Prepare written validation reports for the Positions that document the complete project in detail. The reports will contain descriptions / results of the job analysis and procedures utilized in the development, administration and scoring of the selection devices and statistical information. The validation report(s) should be maintained by the Consultant no later than six (6) months after the date the hiring list/register is completed and should be made available to the City upon request.
- (xii) Establish written procedures necessary to maintain the validity of the selection processes, with a recommended schedule for periodic updates as necessary.
- (xiii) The City anticipates establishing a hiring list(s)/register(s) which is effective for a two (2) year period or less. Based on this, the City would like the Consultant to address whether there is a need for physical ability re-testing prior to official hire.
- (xiv) The City would like to consider whether subsequent hiring processes can be administered with limited or no assistance from the Consultant.
- (xv) Provide a written outline of the administrative and procedural requirements for each segment of the selection process for the Positions. Train City Human Resources Division personnel in the administration procedures to be utilized.
- (xvi) Retain all records, test results, score sheets, rater records, correspondence, e-mails, or other documents received or generated by the Consultant (or anyone on the Consultant's behalf) relating to the services provided by the Consultant to the Contract for a period of (i) three (3) years following the completion/availability of validation reports to the City or (ii) the expiration of any litigation that may arise out of the selection process for the Positions or the Consultant's work done pursuant to the contract, whichever period is longer.

b. The following services are to be provided by the City:

- (i) Provide the selected Consultant with current job descriptions for the Positions.
- (ii) Provide collaboration with City Human Resources Division and City Fire Services Division employees who are knowledgeable of the entry-level selection procedures utilized to date, such knowledge to include selection and testing procedures.
- (iii) Provide internal support in terms of individual and group assistance as necessary for the acquisition of relevant information concerning the City Fire Services Division.

- (iv) Provide resources for the collection of job analysis data, information retrieval and administration.
- (v) Provide meeting and training facilities for the project team, as needed.
- (vi) Evaluate the reports prepared and presented by the selected Consultant.

### **1.3 General Conditions**

- a. In the event of any litigation arising out of the selection process or the Consultant's work done in pursuant to the Contract, the Consultant must provide a maximum of 50 hours of expert consultation to the City or its designee regarding legal matters related hereto or arising from the services described herein as a part of the Contract price. Additional expert consultation may be required and will be charged at a negotiated hourly rate.
- b. The selected Consultant shall provide all temporary help at his/her expense.
- c. The selected Consultant shall provide other related services as may be required.
- d. The City and the selected Consultant shall bind themselves, their respective successors, executors and administrators, to the full and diligent performance of all of the terms and covenants of the Contract, and neither the City nor the selected Consultant shall assign, sublet or transfer any interest in the Contract without the written consent of the other party thereto. Any material developed by the selected Consultant pursuant to this Request For Proposal, the Contract and/or the selected Consultant's proposal shall be the sole property of the City and shall be provided to the City immediately upon request at any time during or after completion of the project. The selected Consultant further agrees that he/she will not disclose any information pertinent to the Contract without prior approval of the City.
- e. The Contract shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract shall be instituted and litigated in the Courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith the parties to the Contract submit to the jurisdiction of the Courts of the State of Tennessee, located in Shelby County Tennessee.

### **1.4 Subcontracting, Assignment, or Transfer**

- a. Any subcontracting, assignment, delegation, or transfer of all or part of the rights, responsibilities, or interest of either party to the Contract is prohibited unless approved by written consent of the other party. No subcontracting, assignment, delegation, or transfer shall relieve the Consultant from performance of the services of the Contract. The City shall not be responsible for the fulfillment of the Consultant's obligations to its transferors or subcontractors.

- b. Upon request of the other party, the subcontracting, assigning, delegating, or transferring party shall provide all documents evidencing the subcontract, assignment, delegation, or transfer.
- c. Subject to the approval of the City, any subcontractors used by the Consultant shall be professionally qualified to perform the work and/or shall be supervised by persons so qualified.

#### **1.5 B2GNow**

The selected Consultant shall agree to provide the City of Memphis with all subcontractors participating on the Contract and associated payments. It is mandatory that this information be updated regularly in the software program B2GNow.gov.

#### **1.6 Right to Withhold Payment**

Failure to submit all subcontractor information in the compliance tracking software, B2GNow, will result in the withholding of payment until information has been submitted. This information consists of any and all subcontractors used on the City of Memphis projects.

### **2. MISCELLANEOUS PROVISIONS**

#### **2.1 Copyrighted Materials**

The selected Consultant and the City shall represent and warrant that all test materials are proprietary to the Consultant. The Consultant shall agree that he/she will not disclose any information pertinent to the Contract without prior approval of the City, unless required to by law.

#### **2.2 Audit**

The City reserves the right to audit the records of the selected Consultant that are pertinent to the contract. The Consultant shall make and keep as the same accrue, full and complete records and books of accounts of revenue performance under the contract. Records and books of account, kept, maintained, or possessed by the Consultant shall be made available to representatives of the City for inspection and/or copying during normal business hours. The Consultant shall maintain and keep said records and books of accounts for a period of three years after the completion of the Contract or the final payment under the Contract, whichever is later.

#### **2.3 Budget Approval**

Once awarded, the Contract is subject to annual appropriations by the Memphis City Council. In the event that sufficient funds are not appropriated with respect to the contract, the City shall have the option of terminating the contract by providing thirty (30) days advance written notice to the Consultant.

## **2.4 Subject Matter Experts**

In order to maintain the integrity of the testing process, the use of subject matter experts (SMEs) by the Consultant during the test development phase of any of the Positions is not permitted.

## **2.5 Duplication of Test Materials**

The selected Consultant will be responsible for the duplicating of all exercises, tests, materials used (by candidates) during the test, candidate orientation packets, and other similar test-related items. The cost of this duplication should be included in the total contract price.

# **3. TERM AND COMPENSATION**

## **3.1 Term of Contract**

- a. The selected Consultant will be required to enter into a contract with the City for the services described herein and upon such other terms required by the City and agreed to by the parties (the "Contract").
- b. The term of the Contract (the "Term") shall commence on the date of the final execution and shall terminate either one (1) year from the contract execution date or upon the completion and rendering of a final written analysis and report, which ever shall first occur. The parties may mutually agree to amend or extend the Contract. Any changes to the Contract, which are mutually agreed upon by and between the parties, shall be incorporated in written amendments to the Contract.
- c. The estimated project start date is Spring 2011. The project shall begin upon execution of the Contract. The City anticipates the first entry class to begin by Fall 2011.

## **3.2 Schedule of Events**

The following RFP Schedule of Events represents the City's best estimate of the schedule that shall be followed. Unless otherwise specified, the time and day for the following events shall be between 8:30 a.m. and 5:00 p.m. Central Standard Time. The City reserves the right at its sole discretion to adjust this schedule as it deems necessary. Notification for adjustment will be provided to all bidders submitting a proposal by the deadline.

<b>Published RFP Date</b>	<b>10/20/2010</b>
<b>Deadline for Written Questions</b>	<b>10/29/2010 at 4:00 p.m. CST</b>
<b>City Response to Questions Posted</b>	<b>11/16/2010</b>
<b>Deadline for Submission of Proposal</b>	<b>12/10/2010 at 2:00 p.m. CST</b>
<b>Evaluation of Proposals Completed</b>	<b>2/4/2011</b>
<b>Notice of Intent to Award</b>	<b>2/15/2011</b>
<b>Effective Projected Date</b>	<b>3/1/2011</b>

This timetable is for the information of submitting entities. Project restraints may cause these dates to change.



### **3.3 Payment of Services**

- a. In consideration of the selected Consultant's performance of the services set forth in this Request For Proposal, the Contract, and the selected Consultant's proposal submitted to the City, the City agrees to pay the selected Consultant, in bankable money, the sum of the negotiated amount as agreed by both parties and set forth in the Contract.
- b. The Contract price shall be distributed and made by the City to the selected Consultant as follows:
  - (i) Payments may be made in monthly installments and/or as agreed to by the City and the selected Consultant (as set forth in the Contract). The payment schedule may be suspended by the City if, for any reason, the project does not stay on schedule.
  - (ii) Additional work performed by the selected Consultant that is requested by the City and performed during the period of the Contract shall be charged at a rate agreed to by both parties and shall be evidenced by a written amendment to the Contract signed by both parties. Any such work shall be billed to the City at the end of the month in which the work was performed, or upon such other terms as required by the City and agreed to by both parties.
  - (iii) Delays may occur on the part of the City due to unforeseen circumstances. If such delays occur and require additional work to be performed by the selected Consultant, the City shall be charged at a rate agreed to by both parties and shall be evidenced by a written amendment to the Contract signed by both parties.

### **3.4 Deliverables**

The selected Consultant shall deliver all documents and related items as specified herein with priority being given to the following deliverable products:

- a. Job analysis of the Positions, respectively. The selected Consultant shall produce job analysis written summary reports for the Positions.
- b. Written and physical ability tests for the Positions.
- c. Written guidelines for examination administration and scoring procedures for the Positions.
- d. Written method for analyzing results, determining adverse impact and preparing hiring list(s)/register(s) of candidates for the Positions.
- e. Hiring list(s)/register(s) for the Positions and complete all other described services and tasks.

- f. Written validation reports for each step developed for the Positions that document the complete project in detail. The reports will contain descriptions / results of the job analysis and procedures utilized in the development, administration and scoring of the selection devices and statistical information. The validation report(s) should be maintained by the Consultant no later than six (6) months after the date the hiring list/register is completed and should be made available to the City upon request.
- g. Written monthly progress reports submitted to the City Director of Human Resources and the City Human Resources Division's Manager of Testing and Recruitment by the last working day of each month. The monthly report shall list all phases of the process, steps of progression, relative issues and completion dates for the Positions.
- h. The selected Consultant shall include and consult with the City Human Resources Division Testing and Recruitment staff in the planning and administration of the processes and services described herein and in the Contract.

#### **4. INSTRUCTIONS ON THE RFP PROCESS**

##### **4.1 Principal Contact and Information Requests**

- a. All inquiries regarding this RFP shall be forwarded to:

City of Memphis  
 125 N. Main Street, Room 1B-25  
 Memphis, TN 38103  
 Attn: Dana Taylor  
[Dana.Taylor@memphistn.gov](mailto:Dana.Taylor@memphistn.gov)

- b. Bidders should not, under any circumstances, contact any City personnel (including senior City management or City employees with whom the Bidder has an existing business or personal relationship) to discuss this RFP without the Principal Contact's prior written consent. Any bidder attempting to circumvent this process will risk elimination from further participation in the bidding process.

##### **4.2 RFP Inquiries**

Bidders shall submit all questions or concerns related to this RFP by e-mail to the address as specified above. No oral requests for clarification or information will be accepted.

The Bidder shall identify all e-mail inquiries in the subject line as "RFP Inquiry" and shall submit questions no later than the deadline stipulated in the RFP Schedule of Events. To ensure the fair and consistent distribution of information, all questions will be answered by a Question-and-Answer (Q&A) document, which will be posted on the City's website ([www.memphistn.gov](http://www.memphistn.gov)). No individual answers will be given.

The only official answer or position of the City will be the one posted via the City's website. Any revisions to the solicitation will be made only by an addendum issued by the City, which will be posted on the City's website ([www.memphistn.gov](http://www.memphistn.gov)).

#### **4.3 Amendments to RFP**

The City reserves the right to re-issue or change any portion of this RFP, in its sole discretion. In the event it is necessary to revise any part of the RFP after the initial issue date, the City will make modifications by issuing a written amendment, which will be posted on the City's website ([www.memphistn.gov](http://www.memphistn.gov)).

#### **4.4 Withdrawing RFP**

The City reserves the right to withdraw this solicitation at any time prior to making an award based on this solicitation.

#### **4.5 Preparation and Presentation Costs**

The Bidder shall bear the total costs for any and all appearances and the costs associated with preparing the proposal or responding to the RFP. The City shall not, in any event, be liable for any expenses incurred by Bidders in the preparation and/or submission of the proposals. Proposals shall not include any such expenses as part of the proposed budget.

#### **4.6 Ambiguity, Conflict, or other Errors in the RFP**

If a Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify, in writing via fax or e-mail, the City of such error request modification or clarification of the document. The Bidder shall include the RFP number, page number and the applicable paragraph title. The City will issue/post any revisions to the RFP on the City's website ([www.memphistn.gov](http://www.memphistn.gov)). The Bidder is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal of any ambiguity, conflict, discrepancy, etc. shall be waived.

#### **4.7 Failed Competition**

The City reserves the right to reject any or all proposals which are not responsive to the specifications of the Request for Proposal (RFP). Competitive negotiation requires that at least two responsive proposals for the same scope of work and service area be received in response to the RFP. A competition is considered failed if only one responsive proposal is received. If a competition has been declared failed, the City then has the option to reopen the procurement or enter into a non-competitive procurement.

#### **4.8 Withdrawing or Amending a Proposal**

At any time prior to the scheduled deadline for receipt of proposals, the Bidder may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted in writing to:

Jerome Smith, Purchasing Agent  
City of Memphis, Purchasing Department  
125 N. Main Street, Room 354  
Memphis, TN 38103

#### **4.9 Acceptance/Rejection of Proposals**

The City reserves the right to accept or reject, in whole or in part, any or all proposals submitted. The City shall reject the proposal of any Bidder that is determined to be non-responsive.

#### **4.10 Informalities/Minor Irregularities**

The City reserves the right to waive minor irregularities or informalities in a Bidder's proposal when the City determines that it will be in the City's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or excuse the Bidder from full compliance with the RFP specifications and other contract requirements if the Bidder is awarded the contract.

#### **4.11 Oral Presentations**

Bidders may be required to give an oral presentation of their proposal to City representatives for the purpose of clarification to assure the City's full understanding of the proposal. Oral presentations are an option of the City, at the City's sole discretion; however, no proposal may be altered or enhanced during an oral presentation.

#### **4.12 Bidder Indebted to the City**

No contract will be awarded to any organization which, in the City's sole discretion, is in arrears to the City of Memphis upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the City of Memphis, or which has failed to perform faithfully on any previous contract with the City of Memphis.

#### **4.13 Validity of Proposals**

All proposals shall be valid for a minimum period of 120 days from the opening date of the RFP.

#### **4.14 Compliance with the RFP**

The submission of a proposal shall be taken as prima facie evidence that the Bidder has familiarized itself with the contents of the RFP and with these terms and conditions, in particular. The failure or omission by the Bidder to receive or examine this RFP shall in no way relieve the Bidder of any obligation with respect to its submission or of any term or condition of this RFP and may result in disqualification. In order to be deemed responsive, Bidders must provide responses to address all items in the RFP.

#### **4.15 Lengthy Proposals**

The City discourages overly lengthy and costly proposals; however, in order for the City to evaluate proposals fairly and completely, Bidders should follow the format set out herein and provide all information requested. Proposals shall be as thorough and detailed as possible, but prepared simply providing a straightforward, concise description of the Bidder's capabilities to provide the services and satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

#### **4.16 Living Wage**

The contract is subject to **Living Wage Ordinance #5185** as amended by Ordinance #5257 (effective July 1, 2008) that requires contractors who enter into a service contract with the City to pay employees who work under the service contract living wage. The minimum hourly wage shall be at least \$10.27 per hour with health benefits for employees and their dependents or \$12.32 per hour without health benefits. The City will request all certified payrolls associated with this contract to be forwarded to the City Comptroller, c/o Dwayne A. Jones, Manager, Prevailing Wage Office, 125 N. Main St., Room 1B-18, Memphis, TN 38103. Copies of the Ordinances are posted on the City of Memphis website ([www.memphistn.gov](http://www.memphistn.gov)).

#### **4.17 Contract Award**

The City may fund all or any part of a proposal, and the City will only accept proposals for the services requested. The proposal submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the proposal, becomes legally binding once all parties have signed it. Any contract resulting from this RFP shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation. The successful Contractor shall be required to execute the contract originated by the City of Memphis and satisfy all contract requirements as specified by the City. One or more contracts may be awarded under this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds.

#### **4.18 Insurance**

If awarded a contract pursuant to this RFP, the Contractor will be required to have and maintain the insurance specified in the RFP. The successful Contractor will be required to furnish the City, on or before the effective date of the Agreement, a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required is in effect. All insurance companies must be acceptable to the City of Memphis and be licensed in the State of Tennessee.

#### **4.19 Insurance Requirements**

- a. The selected Contractor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. The Contractor shall furnish the City's Risk Manager a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.
- b. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor.

- c. The Contractor shall hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by the Contractor, its employees, subcontractors, or agents, or any negligent acts, errors, or omissions of Contractor, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents. This indemnification shall survive the expiration or termination of this Agreement.
- d. The Contractor shall purchase and maintain in a company or companies licensed to do business in the State of Tennessee, such insurance as will protect the City from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations are performed by the Contractor or by any subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts the Contractor or subcontractor may be liable.
- e. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater and said policy of coverage shall reflect, **"City of Memphis is an additional insured."** The Contractor will maintain throughout the life of the Contract insurance in the following minimum requirements:
  - (i) **Professional Liability** coverage with limits of \$1,000,000.00 per occurrence/ \$1,000,000.00 annual aggregate for the contract.
  - (ii) **Commercial General Liability** coverage with minimum limits of \$1,000,000.00 per occurrence / \$2,000,000.00 annual aggregate, premises / operations coverage, \$2,000,000.00 annual aggregate, and products/completed operations. **The City of Memphis Government, its elected officials, appointees, agents, employees, and representatives shall be named as additional insured on all liability policies.**
  - (iii) **Workers Compensation** coverage, including coverage for sole proprietors, partners, and officers, regardless of requirement by Tennessee State Statute.
  - (iv) **Commercial Auto Liability** covering owned, non-owned, and hired vehicles with minimum limits of: \$1,000,000 Each Occurrence – Combined Single Limits.
  - (v) The Contractor shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise.
- f. Each certificate or policy shall require and state in writing the following clauses:
  - (i) "Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager" by registered mail, return receipt requested to the following address:

City of Memphis  
Attn: Risk Management  
2714 Union Extended, Suite 200  
Memphis, TN 38112

- (ii) **“The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies.” The additional insured endorsements shall be attached to the Certificate of Insurance.”**

- g. The Consultant shall provide the City with a current copy of the Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date.

## **5. PROPOSAL SUBMISSION**

### **5.1 Proposal Submission and Due Date**

Bidder shall submit (A) an original version of its proposal and seven (7) complete printed copies in presentation format; and (B) one (1) unbound copy on or before **December 10, 2010 at 2:00 p.m. CST**, in a sealed envelope, to the addressee provided below:

**City of Memphis Purchasing Department  
125 N. Main Street, Room 354  
Memphis, TN 38103**

The label should identify the contents as:

**City of Memphis RFP: Pre-Employment Selection Procedures for  
Fire Recruit and Firefighter/Paramedic**

A copy of this Request for Proposal (RFP) will be distributed to prospective bidders/vendors. Bidders shall prepare his/her proposal in compliance with all of the instructions outlined in this RFP, completing the requested information and returning the completed documents to the City by the deadline.

Proposals and related materials submitted by the Bidder pursuant to this RFP shall become the property of the City and may be returned only at the City's option. Late or incomplete submissions will be considered non-conforming and will not be considered in the evaluation process.

### **5.2 Proposal Format**

The proposal submitted in response to this RFP will be included as part of the final contract with the selected bidder, and may be amended during final negotiations. By submitting a proposal response, the bidder indicates his/her agreement to the specified terms and conditions presented in this RFP and any exceptions identified by him/her.

All proposals must be prepared in the standard format described in order to facilitate comparison and evaluation.

### **5.3 Cover Letter**

Bidders must submit a one-page cover letter acknowledging the Bidder's understanding of this RFP process and the requirements set forth in this RFP. The cover letter shall include the name, address, telephone and fax number, and e-mail address of the primary company representative(s) to be contacted regarding the proposal. The cover letter must contain the title and signature of a duly authorized officer who is empowered with the right to represent and bind the Bidder. Unsigned proposals will be considered non-conforming and will not be considered in the evaluation process.

### **5.4 Proposal Requirements**

The following information must be submitted as a part of your proposal:

a. Individual or firm name and address.

b. Project Methodology

Describe your proposed project methodology / approach for completing this test development and validation project. Discuss how you would analyze, develop, validate, administer, and score the test(s). Address how the methodology reflects the scope and deliverables of the project. Include the delineation of roles and responsibilities and your methods for protecting the confidentiality and integrity of the test (i.e. security measures).

c. Offeror's Previous Experience

Describe your firm's experience in the field of test development and validation. This description is to include your experience with job evaluations, job observations and job analysis. Detail your firm's experience with projects of similar size and scope. This should include your firm's involvement with public sector or governmental agencies in the development of valid entry-level and/or promotional testing processes, especially Fire and Police Services.

d. Qualifications of Personnel

Provide names, credentials, and resumes of specific individuals who would be committed to this project and their documented experience on similar projects. This should include recent and long-term experience and direct experience with governmental agencies, especially Fire and/or Police Services. This should also include both prime consultant and sub-consultant staff. Name the principals and pertinent staff members who are licensed Industrial/Organizational (I/O) psychologists. Identify the role of the I/O psychologist(s) and whether he/she will act as the overseer of the project (i.e. give directives, make final decisions, accept responsibility for the project, etc.). State whether the principals and pertinent staff will be directly involved in the actual performance of the contract.

e. Timeframes for Completion

Present timeframes for completion (i.e. days, weeks, months) of each phase of the project. Indicate estimated time of completion for the total project. Timeframes should be clear, well thought out, realistic, and reflective of an understanding of the scope of the project.



**f. Cost of the Project**

**Submit your proposed total cost estimates for this project, and your itemized cost at each phase of the project. Include any other miscellaneous costs in your estimate that might affect the total project costs (i.e. actual test administration related costs, testing equipment/staff, test/scoring supplies, photocopying, etc.). Provide your hourly, daily and per phase rates in the event components are added to the project at a later date.**

**\*\* Costs will be evaluated separately; therefore, costs must be submitted sealed and under separate cover.**

- g. Submit at least three (3) references of firms for whom you have provided a similar service and describe the nature of the work provided for each reference. Include firm name, address, telephone number, and the name of a contact person at the firm.
- h. State what hardware and/or software will be used and where the hardware is located.
- i. Please submit any additional information about your firm that you consider relevant for consideration by the City.

**6. SELECTION CRITERIA**

Each proposal submitted to the City in response to this Request for Proposal will be reviewed and weighted by a designated Evaluation Committee which shall include a representative from the City Human Resources Division. The committee may elect to schedule a personal presentation and interview with one or more of the prospective Consultants. After the review process is complete, said committee will recommend a specific Consultant to the Director of the City Human Resources Division who will make the final selection decision, subject to the approval of the Contract by the City.

All proposals submitted in response to this Request for Proposal will be evaluated based on the following criteria:

- a. Project methodology. (20 points maximum)
- b. Offeror's previous experience with projects involving test development and validation, and especially for the specified Positions. (25 points maximum)
- c. Qualifications of personnel. (20 points maximum)
- d. Ability to present a clear understanding of the nature and scope of the project. (15 points maximum)

In rating this criteria, the City will take into consideration whether the project plan is:

- (i) applicable to the scope of work and deliverables;
- (ii) well-organized and clearly presented;
- (iii) inclusive of all required elements;
- (iv) presented with well-established timeframes;
- (v) a customized approach.

- e. Timeframes for completion of each phase of the project as well as the entire project. (10 points maximum)
- f. Cost of the project to the City. (10 points maximum)

**REMINDER: Costs will be evaluated separately; therefore, costs must be submitted sealed and under separate cover.**

## **Terms and Conditions**

### **RFP TERMS**

#### **REQUEST FOR PROPOSAL TERMS**

The City of Memphis seeks proposals from firms who have the expertise to provide Pre-Employment Selection Procedures in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

#### **THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL AND MINORITY BUSINESSES IN THE PURCHASING PROCESS.**

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age or handicap status in employment or in the provision of services.

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for local businesses located within the City of Memphis. A copy of your current Memphis and Shelby County Tennessee Business Tax Receipt must accompany the proposal for consideration of this ordinance.

The contract may be subject to the requirements of Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses receiving a service or service-related contract from the City of Memphis. The Living Wage ordinance and any amendments thereto, can be accessed on the City's website ([www.memphistn.gov](http://www.memphistn.gov)). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the ordinance will be accessible on the top right side under the section "Links".

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Only proposals submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions will be considered. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject proposals. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each organization receiving a set of such documents and/or posted on the City's website. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a vendor shall be deemed to have understood fully the contents and meaning of the RFP.

All proposals must be signed by an authorized representative of your organization. Unsigned proposals will be considered nonconforming.

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

By order of the Mayor of the City of Memphis, Tennessee.

**A C WHARTON, JR., MAYOR**

Jerome Smith, City Purchasing Agent

Proprietary and Confidential

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#### INSTRUCTIONS TO PROPOSERS

Proposers shall submit their signed proposal in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the vendor, the successful vendor, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. Cancellation of this RFP or any subsequent award will be posted on the City's website: [www.memphistn.gov](http://www.memphistn.gov) under the section titled "Government News."

Any firm receiving a mailed solicitation on the above subject and not bidding will be electronically removed from the City's mailing list used for the above-referenced subject after 3 consecutive non-responses or no bids.

For additional information concerning this solicitation, please contact: Dana Taylor at [Dana.Taylor@memphistn.gov](mailto:Dana.Taylor@memphistn.gov) or via facsimile at n/a.

This solicitation shall be in accordance with the City of Memphis Purchasing Policies and Procedures, which may be amended from time to time.

All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the proposals have been evaluated and the intent to award is announced. Until the intent to award is announced, no information regarding any proposal will be released to anyone, except members of the Evaluation Committee who are responsible for evaluating the proposals and other appropriate City staff. All information provided by the Vendor in response to this RFP will be considered by the Evaluation Committee in evaluating the proposal and making an award recommendation to the City.

The Mayor of the City of Memphis is the only individual who can legally sign contracts on behalf of the City. Costs chargeable to the proposed contract shall not be incurred before receipt of a fully executed contract.

## **Exhibit A**

### **“Proposed Contract” SERVICE AGREEMENT**

#### **SERVICE AGREEMENT FOR**

This Agreement is made and entered into as of \_\_\_\_\_ by and between \_\_\_\_\_, hereinafter called the "Contractor" and the City of Memphis, a municipal corporation of the State of Tennessee, hereinafter called the "City":

#### **WITNESSETH**

**WHEREAS**, the City has the need for \_\_\_\_\_; and

**WHEREAS**, the Contractor has the knowledge and expertise to provide such services; and

**WHEREAS**, the parties desire to enter into a contract setting forth the terms and conditions under which the Contractor shall provide said services.

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

**SCOPE OF SERVICES.** The Services to be provided in connection with this Agreement shall include, but not be limited to, those items listed in the Scope of Work, which is attached hereto and incorporated herein as Exhibit A (the "Services").

**TERM.** This Agreement shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Initial Term of this Agreement shall commence beginning \_\_\_\_\_ and shall end on \_\_\_\_\_ ("Initial Term") subject to the availability of funds to finance the same and the successful operation of the program.

The City shall have the option to extend the Initial Term for \_\_\_\_\_ additional one-year periods (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council. Unless the City gives the Contractor written notice of the City's intention not to exercise an option period at least \_\_\_\_\_ days prior to the expiration of the then current period, the option will be automatically exercised, and the applicable Option Period will commence immediately upon conclusion of the preceding Initial Term or Option Period, as applicable. The Initial Term and the exercised Option periods are collectively referred to hereinafter as the "Term."

#### **PAYMENT TERMS AND CONDITIONS**

**INVOICES.** The Contractor shall submit original invoices, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. The invoice shall describe the services, shall reflect any applicable terms of payment, and must show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to the Contractor. Invoices shall be submitted to: \_\_\_\_\_, \_\_\_\_\_, Memphis, TN \_\_\_\_\_, Attn: \_\_\_\_\_

**COMPENSATION.** Unless the City has good faith and reasonable objections to the Contractor's invoice(s), the City shall compensate the Contractor, based on invoices submitted by the Contractor, the sum total not to exceed \_\_\_\_\_ (USD) (the "Fee") during the term of the Agreement, which shall include all reimbursable expenses.

The City shall use its best efforts to remit payment based on the Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with the Contractor based on the Contractor's non-performance, unsatisfactory performance or negligent performance of any services hereunder.

**PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK.** The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as

acceptance of the work nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve the Contractor from its obligation to replace or correct any work that does not conform to this Agreement, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by the Contractor, without delay or additional cost to the City.

If the Contractor receives payment from the City for a service or reimbursement that is later disallowed or rejected by the City or another governmental entity on the basis of audit or monitoring, the Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to the Contractor under this Agreement or any other agreement.

**FINAL CONTRACT INVOICE.** The Contractor shall submit to the City a final contract invoice within 45 calendar days from the termination date of the contract, for any services provided pursuant to this Agreement. The Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. The Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

**INCORPORATION OF WHEREAS CLAUSES.** The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

**REPORTS.** Upon request, the Contractor shall prepare and submit reports of its activities, funded under this agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by the Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public. The City shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until the requirements of this provision have been met.

**ENTIRE AGREEMENT.** This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

**STANDARD OF PERFORMANCE.** All services by the Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules and regulations of the industry, based on the type of services performed hereunder.

**HEADINGS.** Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

**MODIFICATION AND AMENDMENT.** Any changes, modifications or amendments to this Agreement shall not be considered agreed to or binding on the other party, unless such modification(s) have been agreed to in writing and approved by the appropriate City officials in accordance with applicable laws and regulations.

**CONFIDENTIALITY.** While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include materials considered to be confidential information as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) all information owned, possessed or used by the Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use nor disclose or communicate such information, except as provided in this Agreement or as required by law, without the prior written permission of the City.

The Contractor acknowledges and agrees that a breach by the Contractor of this section will cause the City irreparable injury and damage; therefore, the Contractor expressly agrees that the City shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. The Contractor agrees that it will disclose confidential information only to those employees who have a right to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions titled "Public Statements" and "Rights in Data."

**PUBLIC STATEMENTS.** The Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the Services, without first obtaining written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

**EMPLOYMENT OF CITY WORKERS.** The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the City.

**CONTRACTOR'S PERSONNEL.** The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

**INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or employees of the City. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the City the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof.

#### **TERMINATION**

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:
  - a. the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
  - b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or
  - c. the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets; or
2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the services specified under this Agreement or in violation(s) of any of the terms herein, and the Contractor has failed to cure such breach within \_\_\_\_\_ business days of such notice. The City may reject the entire services and cancel this Agreement for any services rendered or

to be rendered hereunder. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

3. Notwithstanding the foregoing or any section herein to the contrary, the contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor is determined.

4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving \_\_\_\_\_ days prior written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

**COMPENSATION FOR CORRECTIONS.** No compensation shall be due or payable to the Contractor pursuant to this Agreement for any of the Contractor's services performed by the Contractor in connection with the City effecting corrections to the services, when such corrections are required as a direct result of negligence by the Contractor to properly fulfill any of its obligations herein.

**CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF.** If evidence is produced before the final settlement of all or any balances that the Contractor has failed to pay laborers employed on his work or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such labor and materials, the City, acting as the agent of the Contractor, may settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance or balances.

**REMEDIES CUMULATIVE.** All remedies available to the City provided herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

**SUBCONTRACTING, ASSIGNMENT or TRANSFER.** The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer.

If granted approval to subcontract, the Contractor shall not subcontract more than \_\_\_\_\_ % of the work required hereunder. The computation for percentages will be based on monetary values.

**CONFLICT OF INTEREST.** Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The



Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

**COVENANT AGAINST CONTINGENT FEES.** The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

**GENERAL COMPLIANCE WITH LAWS.** The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

**NON-DISCRIMINATION.** The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

**SEVERABILITY.** If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible.

**NO WAIVER OF CONTRACTUAL RIGHT.** No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto. No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto.

**SUBJECT TO FUNDING.** This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any

other damages whatsoever of any description or amount.

**CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE.** The Contractor shall take affirmative action to ensure that Small and Minority Businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services, and shall, in addition, take similar appropriate affirmative action in support of Women's Business Enterprises.

**PUBLIC RECORDS.** Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act.

**ORGANIZATION STATUS AND AUTHORITY.** The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

**WARRANTY.** The Contractor warrants to the City that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, expressed, implied or statutory.

**RECORDS AND AUDITS.** The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request.

Upon reasonable notice, the Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

**DISPUTE RESOLUTION.** In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred to the Mayor, City Attorney, Purchasing Agent or a duly authorized representative, whose decision regarding same shall be final.

**FORCE MAJEURE.** The City shall not be deemed in default hereunder, nor shall the City be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause.

**SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**NOTICES.** All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis \_\_\_\_\_

\_\_\_\_\_  
Memphis, TN \_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

With copy, if requested,

to:

City Attorney

125 N. Main, Room 336

Memphis, TN 38103

To the CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_  
Memphis, TN \_\_\_\_\_

Attn: \_\_\_\_\_

Fax: \_\_\_\_\_

**CITY LIABILITY.** The City shall have no liability except as specifically provided in this Agreement.

## **INDEMNIFICATION**

The Contractor shall indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, agents and employees from and against any and all suits, claims, liabilities, damages (consequential or otherwise), or losses brought for bodily injury or damage to property (including attorneys' fees) that arise or are alleged to have arisen as a result of any conduct, whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Agreement or in the performance of the services required hereunder, by the Contractor, its subcontractors, agents or employees, excepting those losses or damages directly caused solely by the acts, errors, or omissions of the City or any of its officers, agents or employees. This indemnification shall survive the expiration or termination of this Agreement.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. The Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against the Contractor as a result of or relating to obligations under this agreement. The City shall have no obligation for the

payment of any judgments or the settlement of any claims asserted against the Contractor or its subcontractors or employees as a result of or relating to the Contractor's obligations hereunder.

The Contractor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

### **LIVING WAGE**

This agreement is subject to Living Wage Ordinance #5185 as amended by Ordinance #5257 (effective July 1, 2008) that requires contractors who enter into a service contract with the City to pay employees who work under the service contract a living wage. The minimum hourly wage shall be at least \$10.27 per hour with health benefits for employees and their dependents or \$12.32 per hour without health benefits. The City will request all certified payrolls associated with this contract to be forwarded to the City Comptroller, c/o Dwayne A. Jones, Manager, Prevailing Wage Office, 125 N. Main Street, Room 1B-18, Memphis, TN 38103. Copies of the Ordinances are posted on the City of Memphis Website ([www.memphistn.gov](http://www.memphistn.gov)). Once on the City's homepage, click on the "Business" link, and then click on "Doing Business with the City" link. A link to the Ordinance will be on the top right side under the section "Links". Annual adjustments to the rates will be posted on the side for the next year in February.

### **GOVERNING LAW, JURISDICTION AND VENUE**

The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

### **INSURANCE**

A. The Contractor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. The Contractor shall furnish the City's Risk Manager a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.

B. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the Contractor may be withheld until those requirements have been met, or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor.

C. The Contractor shall maintain, at its expense, at minimum, the following insurance coverage during the life of the Agreement:

1. **WORKERS COMPENSATION** Employer's Liability in accordance with the statutory requirements and limits of the State of Tennessee and shall require all subcontractors to do likewise.

\$100,000 Each Accident

\$500,000 Disease – Policy Limit

\$100,000 Disease – Each Employee

2. **AUTOMOBILE LIABILITY** covering owned, non-owned and hired vehicles with minimum limits of: \$1,000,000 Each Occurrence – Combined Single Limits

3. The Contractor shall be responsible for maintaining any and all **PROPERTY INSURANCE** on their own equipment and shall require all subcontractors to do likewise.

4. **COMMERCIAL GENERAL LIABILITY**: Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage:

General Aggregate \$1,000,000

Products - Completed Operations \$1,000,000

Personal & Advertising \$1,000,000

Each Occurrence \$1,000,000 (Bodily Injury & Property Damage)

Fire Damage any One Fire \$50,000

Medical Expense any one Person \$5,000

D. Each certificate or policy shall require and state in writing the following clauses:

1. "Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager" by registered mail, return receipt requested to the following address:

City of Memphis

Attn: Risk Management

2714 Union Avenue Extended, Suite 200

Memphis, TN 38112

2. **"The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance"**

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

**CITY OF MEMPHIS**

By: \_\_\_\_\_

AC Wharton, Jr., Mayor

By: \_\_\_\_\_

Title: Name: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

Attest:

\_\_\_\_\_  
Deputy Comptroller